

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RODOLFO DIAZ, Individually and On	§	
Behalf of All Others Similarly Situated,	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 4:15-cv-01282
v.	§	
	§	
APPLIED MACHINERY	§	HON. SIM LAKE
CORPORATION; NABORS	§	
CORPORATE SERVICES, INC. and	§	
NABORS INDUSTRIES, INC.	§	
Defendants.	§	

AND

JUAN DE DIOS HERNANDEZ, Individually	§	
and On Behalf of All Others Similarly Situated,	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 4:17-cv-00989
v.	§	
	§	
APPLIED MACHINERY	§	HON. NANCY ATLAS
CORPORATION; NABORS	§	
CORPORATE SERVICES, INC. and	§	
NABORS INDUSTRIES, INC.	§	
Defendants.	§	

**JOINT MOTION TO APPROVE FLSA SETTLEMENT AGREEMENT AND
MOTION TO DISMISS**

Defendants Applied Machinery Corporation (“AMC”), Nabors Corporate Services, Inc., and Nabors Industries, Inc. (“Nabors”) Plaintiff Rodolfo Diaz, individually and on behalf of all others similarly situated, and Plaintiff Juan De Dios Hernandez, individually and on behalf of all others similarly situated, (collectively, “the Parties”), file this Joint Motion to Approve FLSA Settlement Agreement and would respectfully show this Court as follows:

SUMMARY

The Parties, by and through their counsel of record, have mediated the claims alleged by

Plaintiffs against the Defendants and agree that there is a bona fide dispute as to how much and whether Plaintiffs are entitled to compensation as a result of their claims for wages under the Fair Labor Standards Act (“FLSA”).

The Parties now request that this Court approve the settlements as evidenced in the Mediator’s Proposal Confidential Settlement Agreements and Releases (“Confidential Settlement Agreements”)¹ as a fair and reasonable settlement.

RELEVANT FACTS

Diaz initiated suit against AMC on May 13, 2015. [Doc. 1]. On September 14, 2015, the *Ortega* matter² was initiated against AMC. [Doc. 1, *Ortega*, Case 4:15-cv-02674]. The *Diaz* and *Ortega* suits were then consolidated on November 20, 2015. [Doc. 13, *Ortega*, Case 4:15-cv-02674]. On January 8, 2016, plaintiffs filed their Consolidated Complaint (which added Nabors as defendants).

Plaintiffs filed their Partially Opposed Motion for Class Certification & Expedited Discovery [Doc. 49] on May 16, 2016, which was granted in part on June 24, 2016 [Doc. 65]. Ultimately, 124 individuals joined the case as opt-in plaintiffs.³

More recently, the *Hernandez*⁴ matter was initiated against the defendants on March 31, 2017 [Doc. 1, *Hernandez*, Case 4:17-cv-00989], which was then also consolidated into this

¹ There are actually two such agreements – one for the *Diaz* matter and one for the *Hernandez* matter. While the terms of the Confidential Settlement Agreements are summarized herein, the Parties have agreed to maintain the terms of the Agreements as confidential. As such, they are being filed as exhibits *under seal*. Such filing will allow the Parties to protect the confidentiality of the specific terms of the Confidential Settlement Agreements by avoiding any requirement that the document itself be made a matter of public record.

² *Ortega, et. al. v. AMC*, Case 4:15-cv-02674, In the Southern District of Texas, Houston Division.

³ Although there were initially 137 opt-in plaintiffs, 11 plaintiffs have been dismissed from the lawsuit and two plaintiffs are duplicates.

⁴ *Hernandez, et. al. v. AMC, et. al.*, 4:17-cv-00989, In the Southern District of Texas, Houston Division.

lawsuit on June 23, 2017. [Doc. 249]. In *Hernandez*, 32 individuals joined the case as opt-in plaintiffs.

Generally, plaintiffs alleged in this case that while they were classified and paid as independent contractor welders on an hourly basis, they were actually employees of the Defendants. They contend that they worked in excess of 40 hours, were not exempt workers, and are thus owed overtime wages. Defendants denied, and continue to deny, any violation of the FLSA.

Following the completion of discovery, the parties engaged in settlement negotiations through their respective counsel. The Parties have reached a confidential settlement.

ARGUMENTS AND AUTHORITIES

An FLSA claim, except in two circumstances, cannot be waived or settled. *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 706 (1945). The exceptions are 1) that the Secretary of Labor can supervise the payment of back wages or, 2) that the employer and employee present the proposed settlement to the district court for approval. 29 U.S.C. § 215(b); *see Villeda v. Landry's Restaurants, Inc.*, CIV.A H-08-2287, 2009 WL 3233405, at *1 (S.D. Tex. Oct. 7, 2009). By this Motion, both the Plaintiffs and Defendants request this Court to approve the Parties' settlement agreements, attached as **Exhibits 1 and 2**,⁵ which are being *filed under seal*.

Here, throughout litigation and settlement of this action, all Parties were represented by experienced counsel. Settlement was achieved in an adversarial context, which was negotiated at arm's length, which included two mediations and mediator's proposals, and the Parties stipulate that the settlement provisions are fair and reasonable. Accordingly, the settlement reflects a reasonable compromise regarding bona fide disputes between the Parties with respect to liability

⁵ Attached to each settlement agreement are the release agreements agreed to in each matter. In *Diaz*, there are two versions for the class member release, as some class members (and the class representatives) are obligated to sign one version (version B) whereas the remaining class members have signed the other version (version A).

and the amount of same under the FLSA. *See Lynn's Food Stores, Inc. v. U.S. By & Through U.S. Dept. of Labor, Employment Standards Admin., Wage & Hour Div.*, 679 F.2d 1350, 1354 (11th Cir. 1982). The Parties have voluntarily agreed to a proposed settlement in order to avoid the necessity, expense, inconvenience and uncertainty of litigation. In exchange for the sums to be received by each class member, each class member shall, as a condition precedent, execute and return a release of claims in the manner negotiated by the parties and also apply all relevant tax forms to counsel for the Defendants.

Counsel for the Parties believe that settlement is in the best interests of their respective clients. For these reasons, the Parties respectfully request the Court approve their settlement as to the plaintiffs and opt-in plaintiffs identified herein. The Parties' Confidential Settlement Agreements are contingent upon this Court's approval of the same.

As set forth above, all Plaintiffs participating in this litigation and Defendants have settled their claims in this case as described in the Confidential Settlement Agreements submitted with this Motion *under seal* and executed by class counsel on behalf of the class and Defendants. Plaintiffs and Defendants have also agreed upon the form of the Releases and have tendered a copy of the same as exhibits to the Confidential Settlement Agreements.

WHEREFORE, for all the foregoing reasons, the undersigned Parties request that this Court enter an order approving the Confidential Settlement Agreements, approving the form of the Releases, and dismissing this case in its entirety, with prejudice.

Respectfully submitted,

MARTIN, DISIERE, JEFFERSON & WISDOM, L.L.P.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been served via CM/ECF and/or email on this 16th day of October, 2017 to all counsel of record:

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